

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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Case No. 53085-6-II

Case No. 18-2-04583-1

BIIA Case No. 1515614, 1515614-A

CLAIM ID W475361

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

KENNETH LEE.

Appellant,

Vs.

BOEING CO & DEPARTMENT OF LABOR & INDUSTRIES.

Defendant,

APPELLANTS REPLY BRIEF

Hearing dates: 10-25,29,30; 11-1,2, 2018

Trial Court Judge: Susan K. Serko

Kenneth Lee, PRO SE

Names of attorneys at trial: Boeing Co., Jennifer Kramer, Department of

Labor & Industries, AAG Lucretia Greer

Court Reporter: Lanre Adebayo,

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INTRODUCTION

The Appellant (hereinafter "Kenneth Lee") asks that this court reverse the Verdict of the 12-person Jury. Kenneth Lee does not feel he was given a fair trial and neither was the jury due to all the redactions that were allowed by Judge Susan K Serko. Kenneth Lee was in fact injured while working under The Boeing Company's supervision. During Kenneth Lee's treatments, there has been findings of CRPS. Kramer also withheld Brendon Lee's, Chelsea Lee's, and Christal Lee's depositions and requested \$250 if Kenneth Lee wanted them. Kenneth Lee was also not served properly per court rules. Kramer and AAG Lucretia Greer served Kenneth Lee in court instead of 2 days before court.

On top of this Lucretia Greer the AAG, served Kenneth Lee a document in which had the wrong case number and it was filed in Kitsap county instead of Pierce county where it should have been filed. This was not a fair trial as one document was found to be altered from their original state and these documents were sworn in by Judge Hansen and were done under oath and penalty of perjury by the laws of the State of Washington. Kenneth is unsure as to if there is more documents that were altered. Jennifer A. Kramer also stated in her respondents brief that Kenneth Lee had been found to have malingered in regard to a prior claim, yet other

doctors such as Daniel Wanwig and Lynn Staker that worked in closer proximity and had more time with Kenneth Lee, said he had not been Malingering or faking.

Kenneth Lee was cleared of the wrongful misrepresentation charge in front of a three panel judge, yet Kenneth Lee is still having this charge used against him and had it used against him in court as well during the 12-person jury trial. They are reusing evidence that was deemed unestablished and non-convincing by Judge Linda L Williams and Judge Frank E. Fennerty, Junior. Judge Susan K. Serko denied Kenneth Lee to receive any amount of money for loss of enjoyment in life that has been caused by the Boeing Company drawing out this case. Kenneth Lee has also been found to be **Permanently Disabled** by more than one doctor.

Kenneth Lee's life was and has been affected in a negative manner due to his industrial injury. Kenneth Lee was robbed of even the simplest joys as a parent and lost a lot of independence because of his 2000 industrial injury. Dr. Matthew Drake who testified on behalf of Labor and Industries as well as The Boeing Company changed his testimony within less than a 6 month period. The Boeing Company and L&I used Dr. Drake as key witness and used him in an attempt to accuse Kenneth Lee of Malingering.

STATEMENT OF CASES

Judge Susan K Serko overruled every objection Kenneth Lee had in exception to one which was renewed. Serko overruled only a few times however to Jennifer Kramer's and Lucretia Greer's objections. This was done during the Rulings Of Evidence for the Pierce County Cause No. 18-2-04583-1 dated October 23rd, 2018.

Kenneth Lee was served a document by Lucretia F. Greer dated October 23rd, 2018. This document was served to Kenneth Lee the day of court. The document that Kenneth Lee received was drawn on paper for the Superior Court for the County of Kitsap. The document also had the wrong cause number on it, when this was brought to Judge Serko's attention, Lucretia Greer crossed out the original cause number and wrote in the right one in pen. Kenneth Lee was served another document by Lucretia Greer where she had changed the date on Aaron Hunt's testimony from Febraury 5th, 2013 to February 5th, 2003(see Exhibit 1 for case # 53085-6-11)

Thomas B. Curtis MD. did an initial evaluation on Kenneth Lee on June 19th. 2002 case number W475261, during which time he found a appearance of Chronic Regional Pain Syndrome, CRPS for short. This evaluation took place on 06/19/2002 at Virginia Mason Medical Center.

Dr. Daniel Wanwig testified under oath on November 23, 2016 that Ken Lee did have Permanent Disability and a mental health condition that was proximately caused by his industrial injury. This letter was turned in as exhibit 4 for case number 18-2-04583-1. In this letter Daniel Wanwig states "I hereby stand by my testimony and reaffirm that Kenneth Lee's permanent disability and mental health condition was proximately caused by the industrial injury which precluded Mr. Lee from working from January 2, 2003, through July 15, 2014 and July 16, 2014, through March 20, 2015 and to present." Daniel Wanwig has been the psychiatrist for Ken Lee since 2004 and is still currently seeing Ken Lee.

Brendon Lee testified under oath and under penalty of perjury by the State of Washington on November 23, 2016. In this testimony he states on page 5 lines 19-21 " Both. So I can either be driving and in control of the car fully or helping steering, changing gears, um, anything basically , or anything." Brendon Lee also testified that he helps his dad with multiple daily tasks including, but not limited to, dishwashing, washing clothes, cleaning, vacuuming , sweeping, putting a seat belt on for him, etc. Brendon Lee states all of these task from page 5 line 5 to page 6 line 11 from his testimony on November 23, 2016. Chelsea Lee also testifies on November 22, 2016 page 5 line 11 to 25 that she helped her dad with his seatbelt, cleaning, getting dressed, driving and cooking. On page 11

lines 8 to 20 of Chelsea Lee's testimony, she mentions how Kenneth Lee has to drive due to his industrial injury of 2000.

Catherine Sigman page 25 line 18 to 25 and page 26 line 1 to 18 brings up the strain that the industrial accident caused on Kenneth Lee's and Catherine Sigman's relationship. She mentions about how Kenneth Lee took up drinking and couldn't sleep due to his accident. She also mentions that they ultimately slept in different rooms near the end of the relationship due to him not sleeping well. She also mentions he struggled to find pain relief.

Christal Lee testified on November 22, 2016 that she too had helped her father with cooking, cleaning, steering the wheel, opening doors, grocery shopping, pumping gas, and even helping him get dressed. Christal Lee addresses all of these on page 57 lines 2 to 20 for her November 22, 2016 testimony.

On October 21, 2014 Dr. Thomas Young wrote a response letter to the claims manager of SEDGWICK in Lexington Kentucky claim number W475261 where he mentions reviewing some of the surveillance tapes and his evaluation on Kenneth Lee. In this letter Dr. Young mentions how Kenneth Lee was on "remarkably strong pain medications" He explains how "These medications would lower the threshold of pain and embolden

Mr. Lee to incidentally use the right arm on occasion which is what the video showed.” He also says “ he was unnaturally using the left arm predominantly more than the right when his body mechanics would have been so much more efficient if he had used the right elbow. Indeed, if Mr. Lee knew that he was being secretly recorded he would not have done much different as he relied on the left and limited the right arm use.”

Dr. Young also says “The first video showed Mr. Lee at a salvage scrap yard helping to load items of scrap metal onto a transfer truck. Throughout that multiple minute video this right hand dominant man used primarily his left arm even in an unnatural way as he moved material using tricept muscle strength and having to cross over his body to reach and throw versus the more natural ergonomic movements that a well right arm would have provided.” This letter continues further into what would be expected of a patient.

Dr. Young continues on the second page mentioning how Kenneth Lee was worsened by this activity. Dr. Young mentions how the second surveillance tape he reviewed from 10/18/2013 shows that Kenneth Lee had a worsened status and allowed for his daughter to help put his seat belt on and open doors for him. Dr. Young also goes into detail that doctors chart notes from 10/18/2013 with doctor Paul B. Nutter, show elevated

blood pressure suggesting pain where Kenneth Lee then received ongoing pain medication. Dr. Young ends this note saying “ This patient should remain on time loss and be advanced to pain management and vocational services.

However the letter also says “ In summary, both videos were exactly consistent with what would be expected with this injured worker. There was no “Ah-ha” moment even when he recruited his right arm because he was encouraged to use his right arm and if the right arm was not as painful as he maintained then why did he not use it throughout the video instead of struggling to move the material in a unnatural manner using his left side? The answer to that question is that the right arm poorly tolerated even the limited activity that it was recruited to do and the second video confirmed that the consequence of using the arm was significant worsening the next day.”

Dr. Daniel Wanwig testified under oath under penalty of perjury of the laws of the State of Washington on November 23,2016. On page 33 lines 13 to 18, page 25 line 16 to 20, and page 27 line 21 to 23 Dr. Wanwig mentions he had no findings or documentation that he believed Kenneth Lee was malingering and that Kenneth Lee’s bipolar disorder was lit up and caused by the industrial accident.

Dr. Paul B. Nutter documented in his chart notes of 05/20/2013 that Kenneth Lee said "I should be at work" Dr.Nutter also documented in his chart notes 10/29/2012 about how his driving capabilities have been affected and how his kids have taken over all of the housework and helps him cook and shop as well as comb his hair and put a shirt on. Dr. Nutter also mentions that he became tearful that day. Dr. Nutter also stated in his Declaration of December 3rd, 2007 "Mr. Kenneth Lee is permanently and totally disabled..."

Dr. Lynn L. Staker stated "On 06/04/15, I did have an opportunity to observe the videos of Mr. Lee. I do note that he does favor the right arm and uses his left arm most of the time. From the video, I can see that certainly he is not faking the problem he is having with his right arm."

David B. Condon attorney at law told Kenneth Lee in a Letter dated May 9th, 2014 to stay as active as possible prior to an exam and to not rest up. He also says "you should tell the physicians precisely how you are feeling ; if something bothers or hurts you, tell them. It is important that they see you in your normal disabled condition."

On August 3, 2016 under Judge Hansen Dr. Matthew Drake, on page 17 line 1 to 25 to page 18 line 1 to 23, claims that he had reviewed medical records for Kenneth Lee dating all the way back to 1990 and

claims he had these records on hand at the time. Fast forward to Dr.

Drakes testimony under Judge Ellsworth January 19, 2017 page 33 lines 7 to 25 to page 34 lines 1 to 15, he says he is unsure if he had ever reviewed these medical records and that he may of just had them sent to him in preparation for his testimony. January 19th, 2017 in Colloquy Page 35 lines 20 to 22 after Dr. Matthew Drakes testimony Ms. Greer states that DR. Drake was active duty testifying from the middle east and that they didn't go through 16 years of chart notes with him. Please note that page 35 was redacted from the reading.

ARGUMENT

Kenneth Lee sustained his injury while working for the Boeing Company. He has doctors that he has seen for more than one visit that stated he was not faking or malingering. The only doctors stating he was malingering were doctors he had only seen for one visit and were paid by Labor and industries and/or The Boeing Company. He has doctors stating that the videos only further show the damage that occurred from his 2000 industrial injury. How could someone be faking an illness and go through surgery that doctors requested to fix? Why would Dr. Staker wish to have a EMG and nerve studies done on Kenneth Lee if he was malingering and making up his illness? Dr. Nutter was in the middle of a wrongful death charge when he signed the document saying Kenneth Lee was misrepresenting himself.

The "evidence" for willful misrepresentation that Jennifer Kramer and Lucretia Greer used in front of the 3 panel judge was deemed unestablished, unconvincing, unclear, and uncogent. This same evidence was used again in front of the 12-person jury against Kenneth Lee even after being deemed unestablished. Kenneth Lee has lost almost all of his independence due to his 2000 industrial injury. Kenneth Lee has had to ask several people in his life for physical help even down to getting a shirt

on in the morning. Kenneth Lee has endured countless, unnessecary and inhumane amounts of pain and suffering due to his industrial injury and The Boeing Company and Labor and Industries drawing out his case and stripping him of his workers compensation that he is lawfully entitled to. By Boeing and the L&I stripping Kenneth Lee of his workers compensation they forced Kenneth Lee to have to suffer financial burdens and rent his house out just so he won't loose it. Kenneth Lee was also forced to seek help from the state financially just to get money for food through ebt.

One document was found to of been altered. Who is to say they didn't alter more. Dr.Drake had only seen Kenneth Lee for one visit. Surely you cannot believe a doctor can declare there was malingering in only one visit. Jone Sullivan only saw Kenneth Lee in 2008 for one visit and declared he was malingering years later. Kenneth Lee has had to go about life dealing with constant pain everyday due to his industrial injury of 2000. Kenneth Lee was injured more than once while working for Boeing due to their companies safety negligence. Doctors who are/ have not been paid for by Boeing and/ or L&I have already found that Kenneth Lee was not and has not been malingering or faking and that syptoms that Kenneth Lee has shown demonstrates the diagnosis of Chronic Regional Pain Syndrome or CRPS for short.

Had Dr. Drake actually gone over all of Kenneth Lee's medical history from Dr. Nutter and Dr. Ted Becker he would have found significant skin discoloration on Kenneth Lee throughout medical chart notes. These Chart notes that Dr. Drake claimed to of gone through would of shown him all the symptoms Kenneth Lee was suffering from 2000 to Present. Jennifer Kramer refused to give Kenneth Lee his own childrens depositions unless he paid her \$250. These same depositions were used during questioning of Christal Lee, Chelsea Lee, and Brendon Lee for their testimonies in front of judge hansen. These depositions should have been put in as evidence and Kenneth Lee should have received them since they were used against him. Judge Serko also unfairly overruled Kenneth Lee during the rulings of evidence and appeared to show bias against Kenneth Lee. Judge Serko should have excused herself from the trial due to her of just being involved in a wrongful death case that included Dr.Nutter. Dr. Nutter was Kenneth Lee's former physician and testified in Kenneth Lee's case therefore there was a conflict of interest.

Kenneth Lee never faked or misrepresented his injuries to anybody but his kids. Kenneth Lee hid a lot of the pain he was suffering from his kids so that they wouldn't worry as much. As time went it became harder to hide from his kids who grew up and started noticing the little things they all had once overlooked. Kenneth Lee's kids had to help their father

constantly and from a young age. By time all of Kenneth Lee's kids became teenagers they had become acustom to doing all of the housework and helping their dad. Kenneth Lee suffered loss of enjoyment as not just an adult but a parent.

He couldn't run next to his kids as they tried to learn how to ride a bike. He couldn't play catch with his kids or even be involved in the tiniest of tickle fights. He struggled more days than others with basic activities even down to walking far distances. Kenneth Lee couldn't even help his kids physically do oil changes. He could only stand off to the side and tell them what to do the best of his ability. The Boeing Company is also at fault of Kenneth Lee's current mental illnesses as had he not of sustained the industrial injury of 2000 he would not have had his bipolar disorder and depression be lit up, aggravated, or exacerbated. Had he never sustained this injury he could of lived out his entire life without suffering due to these mental illnesses.

CONCLUSION

Mr. Lee respectfully requests and pray that the Appeals Court grants a reversal for all the Superior Court and Jury decisions including the judgements of cause numbers 18-9-10249-0, 18-9-10250-3, and W475361. Kenneth Lee also request his Permanent Disability be granted and that he receive all of his back pay from July 14th, 2014 and that Boeing pays a penalty for not giving his compensation within a timely manner. Kenneth Lee would also like what the courts feel is fair for his pain and suffering.

Thank You for your time in this matter

Dated December 30th, 2019

Kenneth Lee

A handwritten signature in black ink, appearing to be 'Kenneth Lee', with a stylized, cursive script.

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the state of Washington, that I
caused the documents referenced below to be served as follows: Appealant Reply Brief

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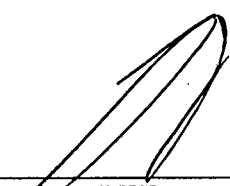
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